IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 452 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JYOTSNABEN,WD/O CHHAGANLAL BHOLIDAS PATEL & 4 - Appellant(s)

Versus

MANJUNATH SHANKER GOSWAMI DELETED AS PER COURT ORDER & 2 - Defendant(s)

==========

Appearance :

MR PRAKASH K JANI for Appellant(s)
DELETED for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
MR RAJNI H MEHTA for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 20/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The present appeal is preferred by the appellants under sec. 173 of MV Act, 1988 read with sec. 96 of Code of Civil Procedure, 1908, against the judgment and award passed by the Motor Accident Claims Tribunal, (Main), Valsad at Navsari dated 27.6.2001 in Motor Accident Claim Petition No. 141/1990, by which, the learned Tribunal awarded an amount of Rs. 2,95,662/- towards the compensation to the appellants.

2. It may be stated at the out set that there is no dispute regarding occurrence of the accident and the learned advocates for both the sides have confined their submissions against the finding with regard to award of compensation passed by the learned Tribunal. Learned advocate Mr PK Jani representing the appellants submitted that deceased who met with the accident was earning Rs. 1,25,000/- per annumn by engaging himself in the business of farming and Animal Husbandry. He was also serving as the Manager in the Adarsh Engineering Co. and also running the

partnership business of Panchvati Hardware. However, the learned Tribunal has not considered the income of the deceased from the farming and Animal Husbandry as well as income earned from the partnership firm and, thus, the learned Tribunal has committed an error in coming to the conclusion that no evidence has been adduced with regard to such income earned by the deceased.

3. Learned advocate contended that even though the village form no. 7/12 was produced vide ex. 30, the agriculture income of the deceased was not properly considered by the Learned Tribunal and the supervisory income from the agricultural operation was considered as Rs. 18,000/- per annum. Thus, the learned Tribunal has committed an error in considering the supervisory income of the deceased as Rs. 18,000/-. The learned Advocate further submitted that even though deceased was working as Manager in the Adarsh Engineering Co., his income from the Adarsh Engineering Co. was not considered by the learned Tribunal. Thus, the learned Tribunal has passed the impugned judgment and award contrary to the well settled principle of awarding the

compensation as enunciated by the Apex Court, and, therefore, the award passed by the learned Tribunal requires to be interfered with and the income of the deceased is required to be considered on the basis of the oral deposition and the documentary evidence adduced in the case. learned Advocate has placed reliance on oral deposition as well as documentary evidence in order to high light the lecuna in the judgment. learned Advocate further submitted that the amount awarded by the learned Tribunal is not based on the documentary evidence and, therefore, enhanced amount of compensation is required to be awarded to the appellants.

4. Learned Advocate Mr. RH Mehta representing the opponent no. 3 submitted that the learned Tribunal has awarded Rs. 2,95,662/- with interest at the rate of 10% per annumn. The calculation arrived at by the learned Tribunal is just and proper and the same is based on the oral deposition as well as documentary evidence adduced before the learned Tribunal. Even the multiplier which is applied by the learned Tribunal to the yearly loss of dependency is on the higher side and, therefore, the learned Advocate

submitted that the award passed by the learned Tribunal is just and proper and does not call for any interference and the First Appeal is liable to be dismissed.

5. We have heard Mr. PK Jani learned advocate for the appellants and Mr. RH Mehta learned advocate for opponent no. 3 at length and in great detail and perused the judgment and award rendered by the learned Tribunal in MAC Petition No. 141/1990.

6. The appellants have not adduced oral deposition and documentary evidence in support of the contention that the deceased was earning annual income of Rs. 1,25,000/- from the business of farming and Animal Husbandry. Even the share of the deceased in the partnership business has not been conclusively proved by the appellant. On further perusal of the evidence adduced in the present case, it is also clear that appellants have miserably failed to prove the supervisory income from the agricultural operations. When there is no cogent and convincing evidence with regard to the income of the deceased, it would be difficult to compute the income of the deceased.

However, the learned Tribunal has considered the income of the deceased from the partnership business as Rs. 5000/- per annumn, supervisory income from the agricultural operation as Rs. 18,000/- and by selling milk, the income of the deceased is considered Rs. 6000/- per annumn. Thus, the total income of the deceased has been rightly considered by the learned Tribunal as Rs. 29000/- per annumn. After deducting 1/3 amount towards personal expenses from the said income, the learned Tribunal has considered the amount of dependency which can be awarded to the appellants as Rs. 19,333/-. Taking into account the age of the deceased reasonable multiplier of 14 was applied by the learned Tribunal to the yearly loss of dependency suffered by the appellants. Thus, the total dependency benefit awarded to the appellants comes to Rs. 2,70,662/-. The learned Tribunal has further awarded Rs. 20000/- towards loss of consortium and loss of estate. . The learned Tribunal has further awarded Rs. 5000/- transportation of the dead-body and other funeral expenses. Thus, the learned Tribunal has awarded Rs. 2,95,662/- with interest at the rate of 10% per annumn from the date

of the petition till realisation. We do not find any merits in this appeal for enhancement of the claim by the appellants as the appellants have, in our considered view, not adduced the evidence with regard to the income of the deceased from the partnership business or supervisory income from the agricultural operation or from Animal Husbandry.

7. In view of the foregoing discussion, this First Appeal preferred by the appellants is devoid of merits and the same is hereby dismissed.

(A.R. DAVE, J.)

(H.B. ANTANI, J.)

mandora/